

**FILED**  
DISTRICT COURT OF GUAM

1           **Louie J. Yanza**  
2           **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
3           115 Hesler Place, Ground Floor  
4           Governor Joseph Flores Building  
          Hagåtña, Guam 96910  
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         Facsimile No.: (671) 472-5487

**Atorneys for Defendant  
MIL AROSE NILOOBAN**

7 UNITED STATES DISTRICT COURT

## **DISTRICT OF GUAM**

ELIZABETH TOLOSA-TAHA ) CIVIL CASE NO. 06-00002  
10 )  
11 Plaintiff, ) MOTION TO DISMISS; MEMORANDUM  
vs. ) OF POINTS AND AUTHORITIES;  
12 ) CERTIFICATE OF SERVICE  
13 MILAROSE NILOOBAN, NILO )  
NILOOBAN, THE TESTATE AND )  
INTESTATE SUCCESSORS OF EDGAR )  
14 G.M. TOLOSA, DECEASED, AND ALL ) [ORAL ARGUMENT REQUESTED]  
PERSONS CLAIMING BY, THROUGH )  
15 OR UNDER SUCH EDGAR G.M.)  
TOLOSA; ALL PERSONS UNKNOWN,)  
16 CLAIMING ANY LEGAL OR EQUITABLE )  
RIGHT, TITLE, ESTATE, LIEN, OR )  
17 INTEREST IN THE PROPERTY )  
DESCRIBED IN THE COMPLAINT )  
18 ADVERSE TO PLAINTIFF'S TITLE, OR )  
ANY CLOUD ON PLAINTIFF'S TITLE )  
19 THERETO; AND DOES 1 to 50,)  
20 INCLUSIVE, )  
21 Defendants. )

## **MOTION**

23           Defendant **MILAROSE NILOOBAN** ("NILOOBAN") through counsel, MAHER •  
24 YANZA • FLYNN • TIMBLIN, LLP, by Louie J. Yanza, hereby moves this Court for an  
25 order dismissing the Complaint in its favor.

1 This motion is made pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal  
2 Rules of Civil Procedure, and is based on this Memorandum of Points and Authorities  
3 filed contemporaneously herewith, the supporting Declarations and evidence served  
4 and filed herewith, the record of the proceedings and papers on file herein, together  
5 with any and all arguments to be adduced at the hearing of the within entitled motion.

Dated this 30<sup>th</sup> day of May, 2006.

**MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
Attorneys for Defendant  
**MILAROSE NILOOBAN**

By:

~~LOUIE J. YANZA~~

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. FACTS

The Plaintiff ELIZABETH TOLOSA-TAHA ("TAHA") is a resident of California. Defendant NILOOBAN is a resident of Guam. In the Plaintiff's Complaint, the Plaintiff has filed a claim for quiet title concerning real property located in Guam. The Plaintiff claims she is the sole heir and wishes this Court to issue a decree holding her as the legal titleholder to the real property. Amended Complaint, ¶8.

Defendant NILOOBAN is without knowledge of TAHA's rights to the property, but Defendant NILOOBAN denies she has any claim of ownership in the property. Defendant NILOOBAN is only a tenant in possession, without ownership rights to the property.

1 Because Defendant NILOOBAN has no ownership rights to said property,  
2 Defendant NILOOBAN asserts the Plaintiff fails to meet the amount in controversy  
3 requirement of \$75,000 in this case and, therefore, this Court lacks subject matter  
4 jurisdiction.

5       Lastly, no court has adjudged the Plaintiff as the sole or lawful heir of the  
6 decedent's estate. Therefore, the Plaintiff lacks standing to assert this cause of  
7 action.

## II. ARGUMENT

A. THE PLAINTIFF FAILS TO MEET THE \$75,000 AMOUNT IN CONTROVERSY.

The district courts have original jurisdiction in civil actions when the matter in  
controversy exceeds the sum or value of \$75,000 between citizens of different states.  
28 U.S.C. §1332(a)(1). The party asserting federal diversity jurisdiction bears the  
burden of proving the case is properly in federal court. McNutt v. General Motors  
Acceptance Corp.

17 Because diverse citizenship here is uncontested, the sole jurisdiction question  
18 before the Court is whether the minimum amount in controversy, required to maintain  
19 a diversity suit in federal court, is present. Since the Plaintiff asserts diversity  
20 jurisdiction, the Plaintiff bears the burden of establishing, by a preponderance of the  
21 evidence, that the amount in controversy exceeds \$75,000. Matheson v. Progressive  
22 Specialty Insurance Company, 319 F.3d 1089 (9<sup>th</sup> Cir. 2003).

24 Here, the amount in controversy does not exceed \$75,000. The Defendant  
25 concedes that she has never maintained, had, or made a claim of ownership in the

1 property at issue. Defendant NILOOBAN has only been a tenant in possession. If at  
2 all, which the Defendant does not concede, there is a dispute between the Plaintiff  
3 and the Defendant. The disputed amount between the two would only amount to  
4 \$12,658.74, plus any allowable legal interest. See, Exhibit "A". The disputed amount  
5 of \$12,658.74 utterly fails to satisfy the \$75,000 legal requirement. Therefore, as a  
6 matter of law, since the Plaintiff's complaint fails to satisfy the \$75,000 "amount in  
7 controversy" requirement, this Court lacks subject matter jurisdiction and this matter  
8 must be dismissed.  
9

10 **B. THE PLAINTIFF HAS NO STANDING TO SUE FOR QUIET TITLE.**

11 There has been no Guam Superior Court adjudication or probate opened of the  
12 decedent, Edgar M. Tolosa's estate, which would adjudge or decree who are the  
13 rightful heirs to the decedent's property.

14 Since the decedent's property is situated in Guam, the Superior Court of Guam  
15 has jurisdiction for the probate of the decedent's estate:

16 **Probation Jurisdiction in Superior Court of Guam.** Wills  
17 must be proved, and letters testamentary, letters of  
18 administration with the will annexed, letters of administration or  
19 special letters of administration granted, and administration of  
estates of decedents had, in the Superior Court of Guam.

20 15 G.C.A. §1403.

21 During the administration of a decedent's estate, there must be an  
22 administrator appointed by the court. 15 G.C.A. §1801. The administrator must be a  
23 resident of Guam. *Id.* (citing same qualifications as executors of wills, 15 G.C.A.  
24 §1701(c)(2)). Once the administrator is appointed by the Superior Court of Guam, the  
25

1 court will then determine whether any child or heir is entitled to inherit the decedent's  
2 estate. 15 G.C.A. §§815~817.

The Plaintiff is somehow under the impression that she is entitled to all of the monies or properties of the estate because she claims she is an adopted child of the decedent. The problem with the Plaintiff's position is that there has been no Superior Court adjudication the Plaintiff is the lawful heir of the decedent and is entitled to all his properties. Probate of the decedent's estate must be opened to determine who are the lawful heirs of the decedent. This has not been done. No court has appointed the Plaintiff, or anyone, as the administrator of the decedent's estate, and the Plaintiff, being a resident of California, woefully fails to meet the residency requirements of administrator for the decedent's estate. Either the Plaintiff has prematurely filed the lawsuit without opening probate, or is attempting to completely skirt administering the decedent's estate so she will be adjudged to have quiet title to the property. In either case, the Plaintiff cannot assert quiet title to the property, as she has no standing to file suit.

## **CONCLUSION**

Wherefore, Defendant NILOOBAN respectfully requests that this matter be dismissed as there is no subject matter jurisdiction and the Plaintiff lacks standing.

Respectfully submitted this 30<sup>th</sup> day of May, 2006.

**MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
Attorneys for Defendant  
**MILAROSE NILOOBAN**

By:

**LOUIE J. YANZA**

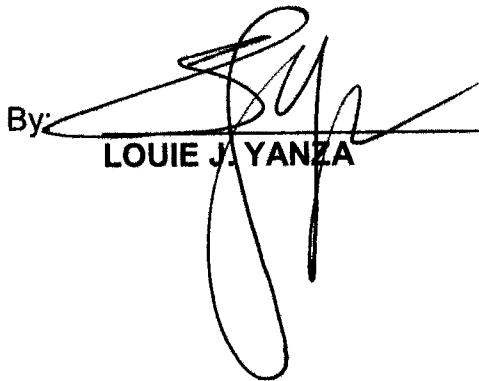
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2                   **CERTIFICATE OF SERVICE**  
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5                   I, LOUIE J. YANZA, hereby certify that on the 30<sup>th</sup> day of May, 2006, I caused  
6 a copy of the annexed **MOTION TO DISMISS; MEMORANDUM OF POINTS AND**  
7 **AUTHORITIES; CERTIFICATE OF SERVICE** to be served upon the parties hereto, by  
8 either delivering, faxing and/or mailing a copy of same to their attorney of record, as  
9 follows:  
10

11                   **Gerald E. Gray, Esq.**  
12                   213 E Buena Vista Avenue, Suite 202  
13                   Dededo, Guam 96929-5321  
14                   Counsel for Plaintiff Elizabeth Tolosa-Taha

15                   Dated this 30<sup>th</sup> day of May, 2006.  
16

17                   **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
18                   Attorneys for Defendant  
19                   **MILAROSE NILOOBAN**

20                   By:   
21                   LOUIE J. YANZA  
22  
23  
24  
25

1 EDNA V. WENNING, ESQ. (SBN 130377)  
2 Law Offices of Edna V. Wenning  
3 Monrovia, California 91016  
4 Telephone: (626) 359-3219  
5 Facsimile: (626) 359 4279

6 Attorney for Plaintiff  
7 ELIZABETH TOLOSA-TAHA

8  
9  
10 UNITED STATES DISTRICT COURT  
11  
12 DISTRICT OF GUAM

13 ELIZABETH TOLOSA-TAHA, ) CIVIL CASE NO. 06-00002  
14 Plaintiff, )  
15 vs. ) DISCLOSURES REQUIRED BY FRCP  
16 ) RULE 26(a)(1)(A), (B), (D) AND RULES  
17 ) 26(a)(2); CERTIFICATE OF SERVICE  
18 )  
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21 COMES NOW, Elizabeth Tolosa-Taha, ("TAHA") through counsel EDNA V. WENNING  
22 and GERALD E. GRAY, and makes the following disclosures:

23  
24 RULE 26 (a)(1)(A) DISCLOSURE

25 Elizabeth Tolosa-Taha - 940 Toulouse Way, Martinez, California 94553  
26 (925) 285-5222; Plaintiff and administrator of the estate of  
27 Edgar G.M. Tolosa

**RULE 26 (b)(1)(A) DISCLOSURE**

Warranty Deed dated April 13, 1973 attached to the Complaint as Exhibit A:

Payoff Letter from the Bank of Hawaii dated June 13, 2002 attached as Exhibit B to  
the Complaint;

Mortgage Note dated April 13, 1973 attached as Exhibit B to the Complaint;

Certificate of Death of Edgar M. Tolosa dated November 1, 1999 attached as Exhibit C  
to the Complaint

**Amended Certificate of Live Birth of Elizabeth Tolosa-Iaha attached as Exhibit D to the**

Certification from the City Civil Registry Office of the Republic of the Philippines,  
Quezon City, Metro Manila dated January 27, 2000 attached as Exhibit D to the Complaint:

Certification from the City Civil Registry Office of the Republic of the Philippines,  
Quezon City, Metro Manila dated January 27, 2000 re adoption of Elizabeth Tolosa attached  
as Exhibit D to the Complaint:

**RULE 26 (c)(1)(D) DISCLOSURE**

Unpaid Rent from May 2, 2002 through May 9, 2006 at \$279.19 per month x 46 months  
= \$12,658.74 plus allowable legal interest. Damages may be continuing if the Niloobans  
continue to occupy the premises. Additional amount for clean-up and repairs not included.

**RULE 26 (d)(1)(D) DISCLOSURE**

**There is no insurance involved at this time.**

**RULE 26 (e)(1)(D) DISCLOSURE**

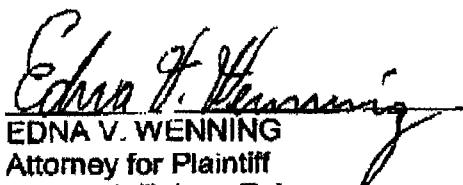
No experts are designated at this time.

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Respectfully submitted

4  
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6 Dated

5/15/06

  
EDNA V. WENNING  
Attorney for Plaintiff  
Elizabeth Tolosa-Taha

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13 Dated

14 GERALD E. GRAY  
Designated Local Counsel  
15 Attorney for Plaintiff  
16 Elizabeth Tolosa-Taha

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RULE 26 DISCLOSURES

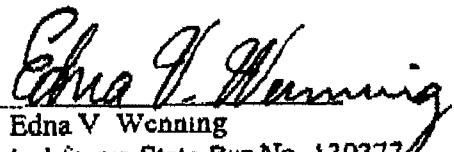
**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2006 I have served a copy of the following document:

1. Disclosures Required by FRCP Rule 26(a)(1)(A), (B), (D) and Rules 26(a)(2), Certificate of Service addressed to counsel of record, by either delivering, faxing and/or mailing a copy of same to the following:

Louie J. Yanza  
Maher.Yanza.Flynn.Limblin, LLP  
Governor Joseph Flores Building  
Hagatna, Guam 96910

This 18<sup>th</sup> day of May , 2006

  
Edna V. Wenning  
Edna V. Wenning  
California State Bar No. 130377  
Attorney for Plaintiff

289 Norumbega Drive  
Monrovia, California 91016  
(626) 359-3219